

ORIGINAL

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Amendment of Sections 74.1231, ) MM Docket No. 97-\_\_  
74.1232, 74.1233, 74.1284 of the ) RM-9419  
Commission's Rules )

To: Mass Media Bureau

**STATEMENT IN OPPOSITION  
TO PETITION FOR RULE MAKING OF  
THE AMERICAN COMMUNITY AM BROADCASTERS ASSOCIATION**

Educational Media Foundation ("EMF") respectfully submits this statement opposing the Petition for Rule Making in the above-captioned matter, which was filed by the American Community AM Broadcasters Association ("ACAMBA") on August 13, 1997 (the "ACAMBA Petition").<sup>1/</sup> The stated purpose of the Petition was to request amendment of the Commission's rules to permit AM station licensees to become the licensees of and to rebroadcast their signals on FM translator stations as a fill-in service within their nighttime signal contours. As the licensee of two AM stations and 12 noncommercial educational FM stations located in communities within Arizona, California, Oregon, and Texas, as well as the licensee of many noncommercial FM translator stations throughout the country,<sup>2/</sup> EMF is concerned about the detrimental effects of ACAMBA's proposals not only on the AM service as a whole, but also on service provided by

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<sup>1/</sup> The time for filing comments in this proceeding was extended to February 10, 1999 by Order, DA 99-115 (released January 7, 1999). Accordingly, this statement is timely.

<sup>2/</sup> EMF also holds construction permits for several noncommercial educational FM stations and many noncommercial FM translator stations.

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noncommercial educational FM stations. These drawbacks far outweigh any potential benefits of the proposed rule changes. Accordingly, ACAMBA's Petition should be rejected.

Should the Commission find that the proposal has some merit, however, EMF urges that certain modifications be made to limit the harmful effects of the rule changes, while specifically responding to ACAMBA's purported concern with improving nighttime AM signal coverage. These modifications include requirements that: (1) FM translators rebroadcasting AM signals should be permitted to operate only at night; (2) the nighttime coverage contour of such translators should not extend beyond the 5 mV/m daytime coverage contour of the AM station being rebroadcast; (3) AM station applicants for FM translators should not be permitted to take precedence over noncommercial educational FM station applicants; and (4) noncommercial educational FM translators should continue to be able to operate in the commercial band.

### **Discussion**

#### **I. Permitting Rebroadcast of AM Signals by FM Translators is Unnecessary to Preserve the Economic Vitality of AM Stations as Well as Detrimental to the Long-Term Health of the AM Service**

As a threshold matter, EMF questions ACAMBA's bald assertion that "increased competition through deregulation and market consolidation has struck a near fatal blow to the ability of AM stations to maintain their prominence in these communities." ACAMBA Petition at 5. Notwithstanding ACAMBA's gloomy portrayal of the economic outlook for AM stations, AM radio currently is enjoying a renaissance. In 1990, when the Commission rejected AM broadcasters' attempt to remedy their competitive disadvantage by retransmitting their programming on the FM band, the broadcasters' were forced to seek solutions on their own band. This effort resulted in the revival of the talk radio format, which in turn has revitalized the AM service. On the other hand, had broadcasters simply been allowed to duplicate their AM service

on the FM band, AM listening would likely have further eroded as even those listeners who could receive the AM signal simply switched to the higher quality signal in the FM band. As this example demonstrates, the future of AM radio does not rest in simply moving AM programming to the FM band, but rather in the development of innovative programming and creative solutions to the technical disadvantages inherent in the band. The Commission should not now allow AM broadcasters to take this first step toward abandonment of the AM band as a quick fix to their technical difficulties.

The Alaska AM stations that make use of FM translators do not prove otherwise. In the case of KIAM(AM), Nenana, Alaska, one of the AM stations cited by ACAMBA, the Commission granted a waiver of its rules to permit the nonprofit AM licensee to rebroadcast its signal via satellite on an FM translator operating in the commercial band. The waiver was granted to enable KIAM to expand its service beyond its existing coverage area to remote Alaskan villages. This case is unquestionably unique and not at all in keeping with ACAMBA's proposal. In fact, even if ACAMBA's proposal is adopted, service such as that provided by the KIAM translator would continue to be prohibited absent a waiver.

**II. Should the Commission Choose to Permit Use of FM Translators to Provide Fill-in Service for AM Stations, then the Rules Should be Narrowly Tailored to Achieve Their Stated Purpose**

As demonstrated above, use of FM translators by AM stations to provide fill-in service within their nighttime signal contours is not only unnecessary, but inadvisable. Should the Commission choose to permit such use, however, it should adopt rules that are narrowly tailored to achieve its purpose. According to ACAMBA, modification of the Commission's rules is necessary so that AM stations may improve their nighttime coverage to their local service areas. See Petition at 3 and 4. ACAMBA's proposed rule changes, however, would go much further.

For example, nothing in the proposed rules would restrict a fill-in FM translator to nighttime operation. Accordingly, AM stations could use such translators to supplement weak daytime coverage areas as well as to fill in weak nighttime coverage areas. That AM stations would use FM translators in this manner seems likely given ACAMBA's choice of the 0.5 mV/m contour (54 dBu) as the contour within which an FM translator would be able to supplement an AM station's signal. In EMF's experience, the 0.5 mV/m signal of an AM station covers a wide area and is quite weak. Moreover, use of the 0.5 mV/m contour could very well permit a single AM station to request multiple FM translators. ACAMBA's proposal would also foreseeably permit an AM station to *extend* its coverage beyond its protected contour by entering into an arrangement with an unaffiliated FM translator station to rebroadcast the AM station's signal. See ACAMBA Petition, Exhibit A, § 74.1232(e).<sup>3/</sup> These changes go well beyond ACAMBA's stated purpose of permitting the use of FM translators to provide fill-in service within AM stations' nighttime signal contours. Accordingly, should the Commission choose to adopt ACAMBA's proposal, it should be modified to provide that:

- (1) an FM translator rebroadcasting an AM signal may operate only at night; and
- (2) the nighttime coverage contour of an FM translator rebroadcasting an AM signal may not extend beyond the 5 mV/m daytime coverage contour of the AM station.<sup>4/</sup>

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<sup>3/</sup> ACAMBA also proposes to make applicable to AM stations the rules permitting use of alternative signal delivery means by noncommercial educational FM translators operating on a reserved channel that rebroadcast the programming of a commonly-owned noncommercial educational FM station. See ACAMBA Petition, Exhibit A, § 74.1231(b)(1), (b)(2). The purpose of this proposed change is unclear given that the Commission's rules do not provide for noncommercial educational AM stations and, more importantly, the sole stated purpose of the proposed rule changes is to permit AM stations to use FM translators to provide fill-in service.

<sup>4/</sup> EMF also notes that should the Commission adopt ACAMBA's 2500 watts daytime/500  
(continued...)

Finally, although not mentioned in the text of the ACAMBA Petition, ACAMBA's proposed rule changes would fundamentally alter the rights of noncommercial educational FM stations by (1) restricting their use of FM translators to those operating on reserved FM channels, and (2) permitting an AM station to force an existing noncommercial educational FM translator station rebroadcasting a satellite-delivered signal to relocate to a reserved FM channel so that the AM station could acquire a fill-in FM translator. See ACAMBA Petition, Exhibit A, §§ 74.1231(b), 74.1233(g). Giving AM stations priority over noncommercial educational FM stations within the FM band is unwarranted. As the Commission has recognized, noncommercial educational broadcast stations provide a valuable service to the public that often goes unmet by commercial broadcasters. See, e.g., Ascertainment of Community Problems by Noncommercial Educational Broadcast Applicants (Notice of Inquiry and Notice of Proposed Rule Making), 42 FCC2d 690, 694 (1973) (noting that the noncommercial broadcast service is designed to meet cultural and informational needs often given minimal attention by commercial broadcasters who normally program to reach a large mass audience); Educational Information Corporation, 6 FCC Rcd 2207, 2208, 2209 n.3 (1991) (noting that both Congress and the Commission have recognized the unique characteristics and special standing of the noncommercial educational service); Modesto and Ceres, California, 6 FCC Rcd 3613 (MMB 1991) (noting Commission's policy to "provide a regulatory atmosphere conducive to the encouragement and preservation of the unique and valuable service offered to the public by noncommercial educational facilities"). In most large urban areas, no reserved FM frequencies are available for translators. Thus, ACAMBA's proposed rule changes would preclude the establishment of new noncommercial

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<sup>4/</sup> (...continued)  
watts nighttime eligibility standard, then it should adopt a rule prohibiting AM stations from reducing power in order to become eligible for an FM translator station.

educational FM service to these urban areas and to other areas where no reserved channels are available. Moreover, the forced relocation of a noncommercial educational FM station operating on a commercial frequency, in the small number of cases where such relocation would be technically feasible, would be fundamentally unfair since the coverage issues involved are complex, with such changes often dramatically impairing service to the public.<sup>5/</sup> Accordingly, the Commission should reject any proposed rule changes that would allow AM station applicants for FM translators to take precedence over noncommercial educational FM station applicants.

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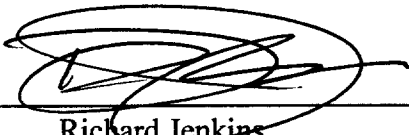
<sup>5/</sup> EMF also notes that Commission rules already prohibit FM translators operating on commercial frequencies from directly receiving the signal to be rebroadcast by satellite. 47 C.F.R. § 74.1231(b). Accordingly, no such situations exist other than those exceptional cases in which the Commission has granted a waiver of its rules.

**Conclusion**

For the reasons set forth above, EMF respectfully requests that the Commission reject ACAMBA's FM translator proposal as an ill-conceived first step toward abandonment of the AM band in favor of migration to the FM band. If the Commission should decide that the proposal has some merit, however, EMF requests that the proposal be modified as indicated above to avoid causing harm to noncommercial educational FM stations as well as to the AM service as a whole.

Respectfully submitted,

**EDUCATIONAL MEDIA FOUNDATION**

By  \_\_\_\_\_  
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February 10, 1999

**CERTIFICATE OF SERVICE**

I, Renee Williams, hereby certify that I have on this 10th day of February 1999 caused a copy of the foregoing "Statement in Opposition to Petition for Rule Making of the American Community AM Broadcasters Association" to be served by first class U.S. mail, postage prepaid, upon the following:

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Renee Williams